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in opinion

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May 26, 1958

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CONCORD, N.H.

Harold K. Davison, Chairman
Public Utilities Commission
State House Annex
Concord, New Hampshire

Re: D-F 3679 - White Mountain Power Company

Dear Sir:

Pursuant to the request of the Chairman we have considered the matters raised by the above-designated Petition, and in connection therewith have examined the Commission's files and staff memoranda, as well as the reports of the Commission bearing upon it. We understand the issue presented by the Petition is whether the Company is entitled to earn a return upon \$230,000 invested in its electric facilities in the circumstances set forth.

Upon a study of the relevant legal principles we discover no basis for the exclusion of the rate base of the property represented by this investment.

As we understand the facts of the case, prior to 1950 the Company issued short term notes in the indicated sum, \$230,000, and with the proceeds bought property which became and is used and useful in rendering its utility service. In July 1950, the New Hampshire Electric Cooperative, Inc., became the sole owner of the stock and outstanding bonds of the Company; and thereafter, in August of the same year, made a contribution of the sum under consideration for the purpose of paying off the short term notes.

This procedure was approved by the Commission in a proceeding reported at 32 N. H. Public Service Commission Reports 191; and in the Order rendered in that proceeding under date of May 24, 1950, it was directed that the contribution of the Cooperative should be treated on the Company's books as "Contributed Surplus".

Mr. Harold K. Davison

- 2 -

May 26, 1958

The Petitioner recites that in rate schedules filed in 1952 and in 1954 the property represented by the \$230,000 expenditure was taken into consideration, but it notes that at the request of the Commission such property was omitted in a filing of May 1956 (IR 10417) "in order to facilitate action upon the Company's Petition as to . . . rates". In acquiescing in this procedure the Company reserved its rights to have the matter reconsidered at a later date; and the present Petition is directed to that purpose.

It is the general rule that all of the property usefully employed by a utility in carrying out its utility function is to be deemed a part of its rate base and hence the source of a return to its owners, unless for some reason resting upon equitable principles the regulatory body may properly exclude it. One authority states the doctrine as follows:

"Undoubtedly the general rule is that the value of property owned by the utility and devoted to public use must be recognized in the rate base, but as rate making is an equitable process this rule is subject to modification or qualification according to the circumstances of each case. . . [T]he weight of authority and reason points to the conclusion that property donated by individual consumers to facilitate the performance of utility service, or property donated by the community to the same end, cannot be included in a valuation as a basis for increasing the rates which may be charged for the service. . ."

I. Whitton-Wilcox, Valuation of Public Service Corporations, s. 400.

The reported cases in other jurisdictions, as well as the accepted practice here, show an apparently universal exclusion of the contributions made by customers. In like manner, contributions made by municipalities are generally, although not universally, see, e.g., Public Utilities Commission (Maine) v. Portland Water District, 76 FUR (ME) 135, deemed not a proper basis for earning by the utility which is the beneficiary of the contribution. We find no case, however, wherein property contributed by the utility's owners has been denied a return, the test of used and useful in the public service having been met. It is believed that the corporate nature of the parties to the transactions leading to the present situation will not be allowed to obscure the basic relations involved. The case will be decided by the

MR. HAROLD K. DAVIDSON

- 3 -

Mr. Harold K. Davison

- 3 -

May 26, 1958

principles of law prevailing in New Hampshire and here

"[t]he stockholders are the corporation". (emphasis added) Dow v. Northern Railroad, 67 N. H. 1, 4.

There is, thus, in our law a complete proprietary identity between the Company and the Cooperative.

The conclusion set forth at the beginning of this letter is based upon the foregoing considerations. It may be that there are grounds unknown to us which suggest to the Commission that, nonetheless, justice and equity would exclude the property from the Company's earning base. If the Commission will advise us, we shall endeavor to discover precedents upon the subject for your guidance.

Very truly yours,

Warren E. Waters
Deputy Attorney General

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